

## HOUSE BILL NO. 195

INTRODUCED BY M. WOLERY, NEWMAN

A BILL FOR AN ACT ENTITLED: "AN ACT ADDING CRIMINAL POSSESSION OF DANGEROUS DRUGS AND CRIMINAL POSSESSION WITH INTENT TO DISTRIBUTE TO THE LIST OF CRIMES THAT, IF COMMITTED BY A YOUTH 16 YEARS OF AGE OR OLDER, ARE TRANSFERABLE FROM YOUTH COURT TO DISTRICT COURT; CLARIFYING APPLICATION OF ATTEMPT OR ACCOUNTABILITY TO TRANSFERABLE CRIMES; AND AMENDING SECTION 41-5-206, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 41-5-206, MCA, is amended to read:

**"41-5-206. Filing in district court prior to formal proceedings in youth court.** (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) assault with a weapon as defined in 45-5-213;

(v) robbery as defined in 45-5-401;

(vi) burglary or aggravated burglary as defined in 45-6-204;

(vii) aggravated kidnapping as defined in 45-5-303;

(viii) possession of explosives as defined in 45-8-335;

(ix) criminal distribution of dangerous drugs as defined in 45-9-101;

~~(x) criminal possession of dangerous drugs as defined in 45-9-102(2) (second or subsequent offense); (4); and (5);~~

~~(xi) criminal possession with intent to distribute as defined in 45-9-103(1);~~

~~(x)(xii)~~ criminal production or manufacture of dangerous drugs as defined in 45-9-110;

~~(x)(xiii)~~ attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through ~~(1)(b)(iii)~~ (1)(b)(xii) and ~~(1)(b)(v) through (1)(b)(xii)~~ (1)(b)(xiv);

~~(xii)(xiv)~~ use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in 45-8-403;

~~(xiii)(xv)~~ escape as defined in 45-7-306.

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court if the district court finds, by a preponderance of the evidence, that a youth court proceeding and disposition will not serve the interests of community protection and the best interests of the youth, and that, considering the seriousness of the offense, the case should remain in the district court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been

1 filed in the district court as provided in this section. A case may be transferred to district court after  
2 prosecution as provided in 41-5-208 or 41-5-1605.

3 (5) An offense not enumerated in subsection (1) that arises during the commission of a crime  
4 enumerated in subsection (1) may be:

5 (a) tried in youth court;

6 (b) transferred to district court with an offense enumerated in subsection (1) upon motion of the  
7 county attorney and order of the district court. The district court shall hold a hearing before deciding the  
8 motion.

9 (6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court  
10 shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the  
11 department or a state prison must be evaluated and placed by the department in an appropriate juvenile  
12 or adult correctional facility. The department shall confine the youth in an institution that it considers  
13 proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth  
14 under 16 years of age may not be confined in a state prison facility. During the period of confinement,  
15 school-aged youth with disabilities must be provided an education consistent with the requirements of the  
16 federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

17 (7) A youth whose case is filed in the district court may not be detained or otherwise placed in  
18 a jail or other adult detention facility before final disposition of the youth's case unless:

19 (a) alternative facilities do not provide adequate security; and

20 (b) the youth is kept in an area that provides physical separation as well as sight and sound  
21 separation from adults accused or convicted of criminal offenses."

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